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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/468,173	12/10/1999	DONALD F. GORDON	19880-000800	3310

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EXAMINER

TRAN, HAI V

ART UNIT PAPER NUMBER

2611

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/468,173	<b>Applicant(s)</b> GORDON ET AL.	
	<b>Examiner</b> Hai Tran	<b>Art Unit</b> 2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-17 is/are rejected.
- 7) ☐ Claim(s) 9 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/30/2004 has been entered.

### ***Response to Arguments***

Applicant's arguments filed 11/30/2004, with respect to the rejection(s) of claim(s) 1 and 10 in view of newly added limitation "...collectively forming said IPG" have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Shiga et al. (US 6005562).

### ***Allowable Subject Matter***

Claims 9 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Claim Rejections - 35 USC § 102***

Art Unit: 2611

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1 and 10 are rejected under 35 U.S.C. 102(e) as being unpatentable over Shiga et al. (US 6005562).

Regarding claim 1, Shiga discloses an apparatus for forming a multiplexed transport stream to deliver an interactive program guide (Fig. 1).

An encoder and packetizer 309 adapted (i) to receive a plurality of video inputs, an audio input, and a plurality of data inputs and (ii) to encode and packetize the inputs to generate a plurality of video packet streams, an audio packet streams, and a plurality of data packet streams collectively forming the IPG (EPG1, EPG2, EPG3; Col. 5, lines 5-Col. 6, lines 25);

A multiplexer and assigner (304) adapted (i) to receive the plurality of video packet streams, the audio packet streams and the plurality of data packet streams, (ii) to assign PIDs to the packets stream of the IPG, and (iii) to multiplex the packet streams to form the transport stream (Col. 6, lines 25-35; Col. 10, lines 48-Col. 11, lines 65);

A program mapping table for storing (i) PID assignment of video, audio, and data PIDs associated with a time slot having a viewership level greater than a predetermined threshold (condition access or premium programs or other programs that require pre-established subscription; Col. 13, lines 65-Col. 14, lines 25; Col. 17, lines 30-38); (ii) PID assignment of video and audio programming associated with a predetermined time period (Fig. 19), and (iii) PID assignment of data PIDs associated with the video and audio programming associated with the predetermined time period (Col. 14, lines 59-Col. 15, lines 45);

Shiga further shows a block diagram of an encoder apparatus (Fig. 1) for assembling and transmitting IPG elementary packets stream in a multiplex with various encoded services in packet elementary streams according to MPEG-2 encoder/packetizer (i.e., NHK, NTV... of Fig. 1 comprises video elementary stream, audio elementary stream and ancillary elementary stream; Col. 4, lines 28-43).

Claim 10, the method claim is analyzed with respect to the apparatus claim 1.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2611

2. Claims 2-8 and 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shiga et al. (US 6005562) in view of Herz et al. (US 5351075).

Regarding claim 2, Shiga does not clearly disclose, "wherein the timeslot is associated with prime time viewing";

Herz discloses wherein the timeslot is associated with prime time viewing (Fig. 3-5; Col. 6, lines 28-35). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Shiga with Herz, so to schedule highly desired programs within a prime time period that is adaptable to user preferences (Col. 3, lines 65-Col. 4, lines 12).

Regarding claim 3, Shiga does not clearly disclose, "wherein said prime time viewing is associated with one of local, regional, and national viewership".

Herz discloses wherein said prime time viewing is associated with one of local, regional, and national viewership (Col.3, lines 25-65). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Shiga with Herz, so to schedule highly desired programs within a prime time period that is adaptable to user preferences (Col. 3, lines 65-Col. 4, lines 12).

Claim 4, Shiga does not clearly disclose, "wherein the predetermined time period comprises future viewership time schedule" however, Shiga discloses wherein the predetermined time period comprises future time schedule (Col. 11, lines 20-35).

Herz discloses wherein the predetermined time period comprises future viewership time schedule (Fig. 5; Col. 7, lines 23-35). Therefore, it would have been

obvious to one of ordinary skill in the art at the time the invention was made to modify Shiga with Herz, so to schedule highly desired programs within a prime time period that is adaptable to user preferences (Col. 3, lines 65-Col. 4, lines 12).

Claim 5, "wherein video and audio PIDs associated with the future viewership time schedules are mapped with data PIDs associated with the future viewership time schedules" is inherently further met by Shiga in view of Herz according to MPEG encoding for PMT of PID components of each program (Shiga, Fig. 18).

Claim 6, "wherein a plurality of video PIDs are respectively mapped to each data PID" is further met by Shiga in view of Herz, as discussed in claim 5.

Claim 7, "wherein said mapping is based on periodicities a timeslot in day, a particular IPG page, and a particular day associated with the future viewership time schedules" is further met by Shiga in view of Herz, as discussed in claim 5 in which the update of EPG the of a particular day associated with the future viewership time schedule is performed periodically (Shiga; Col 11, lines 22-35).

Claim 8, "wherein popularly viewed video PIDs are distributed evenly among data PIDs to provide load balancing" is further met by Shiga in view of Herz (Herz; Col. 5, lines 50-Col. 6, lines 27).

Claim 11, the method claim is analyzed with respect to the apparatus claim 2.

Claim 12, the method claim is analyzed with respect to the apparatus claim 3.

Claim 13, the method claim is analyzed with respect to the apparatus claim 4.

Claim 14, the method claim is analyzed with respect to the apparatus claim 5.

Claim 15, the method claim is analyzed with respect to the apparatus claim 6.

Claim 16, the method claim is analyzed with respect to the apparatus claim 7.

Claim 17, the method claim is analyzed with respect to the apparatus claim 8.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Tran whose telephone number is 703-308-7372. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher C. Grant can be reached on 703-305-4755. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HT:ht  
02/03/2005

A handwritten signature in black ink, appearing to read 'hai tran', is written over two horizontal lines.

**HAI TRAN  
PRIMARY EXAMINER**